Bradley 25 Fuller Dec. 1880

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. ~~386~~ 123

THE ROYAL INSURANCE COMPANY OF LIVERPOOL, ENGLAND, PLAINTIFF IN ERROR,

vs.

WILLIAM B. STINSON.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF MASSACHUSETTS.

FILED FEBRUARY 8, 1878.

SUPREME COURT OF THE UNITED STATES.

No. 386.

THE ROYAL INSURANCE COMPANY OF LIVERPOOL, ENGLAND, PLAINTIFF IN ERROR,

vs.

WILLIAM B. STINSON.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF MASSACHUSETTS.

INDEX.

	Original.	Print.
Writ of error	1	1
Return on writ of error	2	1
Plaintiff's declaration	4	2
Defendant's answer	6	2
Verdict	7	3
Motion for new trial	7	3
Record of order overruling motion for new trial	8	3
Record of judgment for plaintiff	8	3
Defendant's bill of exceptions	9	3
Opinion of circuit court	59	24
Certificate of clerk of circuit court to record, &c	69	26
Copy of bond to party	71	27

1 UNITED STATES OF AMERICA, *ss:*

The President of the United States to the honorable the judges of the circuit court of the United States for the district of Massachusetts, greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said circuit court, before you, between William B. Stinson, of Malden, in the county of Middlesex, and having his usual place of business in Boston, in the county of *Middlesex*, in the district of Massachusetts, plaintiff, and The Royal Insurance Company, of Liverpool, England, a corporation duly organized by law, and having its usual place of business in said Boston, defendant, in an action of contract, a manifest error hath happened, to the great damage of the said Royal Insurance Company, as by their complaint appears, we, being willing that error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the second Monday of October next, in the said Supreme Court to be then and there held, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right, and according to the laws and custom of the United States, should be done.

Witness the honorable Morrison R. Waite, Chief Justice of the said Supreme Court, the twenty-fourth day of October, in the year of our Lord one thousand eight hundred and seventy seven.

[SEAL.] JOHN G. STETSON,
Clerk of the Circuit Court of the United States,
District of Massachusetts.

Allowed by—

G. F. SHEPLEY,
U. S. Circuit Judge.

2 Circuit court of the United States, district of Massachusetts, ss:

And now here the judges of the circuit court of the United States in and for the district of Massachusetts make return of this writ by annexing hereto and sending herewith, under the seal of the said circuit court, a true and attested copy of the record and proceedings in the suit within mentioned, with all things concerning the same, to the Supreme Court of the United States, as within commanded.

In testimony whereof I, John G. Stetson, clerk of said circuit court of the United States in and for the district of Massachusetts have hereto set my hand and the seal of said court this first day of November, A. D. 1877.

[SEAL.] JOHN G. STETSON, *Clerk.*

3 UNITED STATES OF AMERICA,
Massachusetts District, ss:

At a circuit court of the United States for the first circuit, begun and holden at Boston, within and for the district of Massachusetts, on Monday, the fifteenth day of October, in the year of our Lord one thousand eight hundred and seventy-seven, before the honorable George F. Shepley, circuit judge.

WILLIAM B. STINSON, OF MALDEN, IN THE county of Middlesex, and having his usual place of business in Boston, in the county of Suffolk, plaintiff,

v.

THE ROYAL INSURANCE COMPANY, OF LIVERpool, England, a corporation duly organized by law and having its usual place of business in said Boston, defendants.

In an action of contract.

And the plaintiff says the defendants, on the sixteenth day of July, 1875, made to him a policy of insurance, whereby in consideration of the sum of twenty dollars by him paid to George E. Foster and Gideon Scull, their authorized agents, they covenanted to insure him in the sum of five thousand dollars against loss or damage by fire on his interest as contractor and builder in a frame hotel building known as the Webster House, in Marshfield, in the county of Plymouth, from the thirteenth day of July, 1875, to the thirteenth day of September, 1875, at twelve o'clock noon.

And afterwards, while said policy was still in force, to wit, upon the eighth day of September, 1875, said building was totally destroyed by fire, and the plaintiff's interest therein was wholly lost; and the defendants had immediate notice of said loss, to wit, upon the eleventh day of September, 1875, and a proper account thereof was duly given them within fourteen days from the happening of the same, as required in said policy. And the defendants thereupon became bound to pay the amount insured in said policy to the plaintiff.

And the plaintiff says that he has done everything on his part to be done, as required in said policy; that all conditions have been performed and all things have happened to entitle him to receive the amount insured therein. Wherefore the defendants owe the plaintiff the sum of five thousand dollars and interest thereon from the eleventh day of September, 1875, to the damage of the said plaintiff (as he says) the sum of ten thousand dollars.

The writ in this cause is dated the twenty-third day of November, A. D. 1875, and is made returnable before the justices of the superior court for the commonwealth of Massachusetts, then next to be holden at said Boston, on the first Tuesday of January, A. D. 1876.

This action was removed from said superior court, upon the petition of said defendants filed and allowed in that court, and duly entered in this circuit court at the May term thereof, A. D. 1876, when and where the parties appeared by their respective attorneys.

This action was thence continued in this court to the October term thereof, A. D. 1876, when, to wit, on the thirtieth day of October, A. D. 1876, the following answer was filed by consent, namely:

Answer.

And now comes the defendants and for answer deny each and every allegation in plaintiff's declaration contained.

And for further answer defendants deny that the plaintiff had any insurable interest or property, or any interest or property, in the building or frame hotel alleged to be insured by defendants.

And they further deny that all things have happened to entitle the plaintiff to recover the amount alleged to be insured, and that said building was destroyed by any fire insured against by them, or covered by said alleged policy of insurance, but aver that if burned it was
7 burned by plaintiff's own willful neglect, act, or fault.

By their attorneys,

C. T. & T. H. RUSSELL.

Issue being thus joined the cause after a full hearing is committed to a jury sworn according to law to try the issue, who, after hearing all matters and things concerning the same, returned their verdict therein, and upon oath say:

The jury find for the plaintiff, and assess damages in the sum of five thousand three hundred and forty-four dollars ($5,344).

Thereupon, leave of court having been granted to said defendants to file a motion for new trial, based upon the instructions, the following motion for new trial was filed, namely:

Motion for new trial.

And now come the defendants, and not waiving the exceptions by them taken to the rulings and instructions given, and the refusals to rule as requested by the defendants by the court, by leave of the court, move that the verdict be set aside and a new trial ordered by
8 reason of error in law in the said rulings, instructions, and refusals to rule of the court.

By their attorneys,

C. T. & T. H. RUSSELL.

Thereupon the cause was set down for hearing upon said motion for new trial, and the respective parties, by their counsel, were fully heard by the court thereon.

This cause was thence continued to the May term of this court, A. D. 1877, when said motion for new trial overruled by the court.

This cause was thence continued to this present term.

And now, to wit, October 19, 1877, it is considered by the court that the said William B. Stinson, plaintiff, recover of the said Royal Insurance Company of Liverpool, defendants, the sum of five thousand six hundred fifty-two dollars and sixteen cents damage, and his costs of suit taxed at one hundred eight dollars and twelve cents.

Upon the trial of said cause after the evidence was closed on both sides, and before the cause was submitted to the jury, the said defendants took exceptions to certain rulings and instructions of the
9 court, and having presented their bill of exceptions the same was allowed by the court and ordered to be filed, as of November 3, 1876, before the jury left the bar, and is as follows, namely:

Bill of exceptions.

UNITED STATES OF AMERICA,
Mass. Dist., ss:

Circuit court, Oct. term, 1876.

WILLIAM B. STINSON
v.
ROYAL INSURANCE COMPANY.

Be it remembered that at a term of a circuit court of the United

States holden at Boston, within and for the district of Massachusetts, on the sixteenth day of October, A. D. 1876, the fifteenth being Sunday, by the honorable George F. Shepley, circuit judge, came William B. Stinson, and by an action of contract begun originally in the superior court, Suffolk County, and removed thence to the circuit court of the United States, declared against the Royal Insurance Com-
10 pany, as by the writ and declaration will of record appear, to which the defendants filed their answer, as also of record appears; and thereupon said case came on for trial before said circuit court at said October term, before a jury empanneled for that purpose; and that said plaintiff then and there as evidence to prove the issue on his part offered a contract made between him and one Horace P. Flint, by which the plaintiff agreed to build for said Flint a hotel in the manner and according to the specifications, and for the price and payments in the said contract provided, a copy of which is hereto annexed, marked A; also, a deed of the premises upon which said hotel was built, made by one Stephen M. Allen to said Flint, a copy of which is hereto annexed, marked B; also, a policy of insurance made by the defendants to the plaintiff, a copy of which is hereto annexed, marked C.

At the time of making this contract there was upon the premises upon which the hotel was to be built a mortgage made by
11 said Flint on the seventh day of February, A. D. 1873, to one Stephen M. Allen, to secure the sum of twelve hundred dollars in one year, and fifteen thousand eight hundred dollars in five years from the date of said mortgage, with interest at seven per cent., payable semi-annually, a copy of which mortgage is annexed, marked D; that said Allen on the twenty-third day of June, A. D. 1873, assigned said note and mortgage to one James Deshon, who, on the twentieth day of August, A. D. 1874, entered upon said premises for breach of condition of said mortgage under the provisions of sections one and two of chapter 140 of the general statutes of Massachusetts, and made and recorded the certificate, a copy of which is hereto annexed with the power under which it was made, marked E.

The plaintiff further introduced evidence tending to show that he proceeded with the work, and in September, 1874, had nearly completed the hotel, but that the payments stipulated in the contract were
12 not made by Flint, though repeatedly demanded: That thereupon the plaintiff ceased to work on the building, and claimed compensation for the work already done, under G. S. chap. 50, sec. 20; that he ceased to work on the building on the fourth day of September, A. D. 1874; that on the eighteenth day of the same September he made, swore to, and filed with the town clerk of Marshfield, where the building was situated, a statement of his claim for a lien, under chapter 150 of the general statutes of Massachusetts, which statement is made part of the case, and a copy thereof included in the records of the court hereinafter next mentioned; that thereafter, on the twenty-second day of said September, the plaintiff filed his petition under said statutes in the superior court for the county of Plymouth, in said commonwealth, to enforce his said lien; upon which petition proceedings were had, which are set forth in the records of said court, a copy of which is made part of the case and hereto annexed, marked F.

The plaintiff further offered evidence tending to show that the
13 hotel or building known as the Webster House was on the evening of the eighth of September, A. D. 1875, totally consumed by fire; and that thereafter he furnished to the defendants the proof of loss, a copy of which is annexed, marked G.

There was evidence submitted to the jury on the part of both parties as to the cause of the fire.

The defendants then introduced evidence, tending to show the value of the hotel or building destroyed, together with the land upon which the same was situated, and that the same was not of any value over and above the amount of the debt secured by the mortgage given by said Flint to Allen, and by him assigned to said Deshon, but did not deny that the value of the building destroyed equaled, or exceeded, the whole amount insured in all the plaintiff's policies thereon.

At the conclusion of the evidence on both sides, the defendants contended and requested the court to instruct the jury that the plain-
14 tiff had no insurable interest in the building insured when the policy was issued, except under the lien created by the statutes of Massachusetts; that such lien could only be continued, preserved, or enforced in the specific manner provided by said statutes; that if the plaintiff abandoned the contract and thereafter ceased work under it and ceased work altogether and finally on the building, he would have no lien thereon after thirty days from the ceasing to labor thereon, unless he had caused a statement to be made, sworn to and recorded, as required by section 5, chapter 150, general statutes of Massachusetts, and that such lien would be discharged unless a suit was commenced within ninety days thereafter to enforce the same as provided in section 7, chapter 150, general statutes of Massachusetts. That if on the fourth day of September, A. D. 1874, plaintiff abandoned his contract and finally ceased work on and to furnish materials for said building; and on the eighteenth day of same September, filed a statement
15 with the town clerk of Marshfield, as provided in section 5, chapter 150 of general statutes of Massachusetts; and thereafter within ninety days, commenced a suit for enforcing said lien, and made no other claim on said building as its owner, and never thereafter did any other work on said building, he would have and could have had on the thirteenth day of July, A. D. 1875, no other lien on said building than that set forth in said statement and suit.

That if thereafter a judgment or determination was made in said suit that the plaintiff could not recover anything on such lien; or if said suit was by his consent or otherwise properly dismissed, so that no recovery could or can be had thereon, then the plaintiff ceased to have an interest in the property insured and can recover nothing, or in any event only nominal damages in this suit.

That upon the foregoing facts, if the plaintiff on the thirteenth day of July, A. D. 1875, effected the policy in suit, it cannot under the
16 then existing circumstances be construed to include and cover any other interest than the plaintiff's lien, then sought to be enforced in the process pending. That the plaintiff had then under the Massachusetts statute no other lien, and that this lien could only be preserved and made effective by prosecution under said statute, as therein provided. That he had no other insurable interest in said building. That the judgment or dismissal of said petitions would relate back to its inception and in effect determine that the plaintiff had then no lien upon and so at the date of the policy no insurable interest in said building. That if the plaintiff then had an insurable interest by reason of said lien on said building, any voluntary release by him of the same, by dismissing said process or otherwise, would be such interference with or action upon the defendant's rights of subrogration or otherwise as to prevent a recovery by plaintiff in this suit.

There was no evidence in the case that the insurance company

had ever requested to be subrogated to the plaintiff's rights at
17 any time, or had offered to pay the loss upon being so subrogated.

The court declined to give any of the rulings as requested, except as they are contained in the instructions given by the court as hereinafter stated.

The defendants further contended and requested the court to instruct the jury that if they should find that the value of the building insured was not greater than the amount of the note secured by the mortgage upon it to Allen, then there would be no value in the interest insured, or only so much value as there might be in the building as property over and above such mortgage, and which would have been applicable to the lien of the plaintiff. That under the statutes of Massachusetts the lien of the plaintiff was subject to the mortgage of Flint to Allen, and that the plaintiff's insurable lien interest, for which he could recover in this suit, was limited to his interest in the property insured, and that such interest would be only his lien and its value over and above
18 all prior valid incumbrances, for which incumbrances he should be or was in no way responsible; that if the building or property insured was, when the insurance was made and the loss occurred, of no value over and above the mortgage of Flint to Allen, the plaintiff could recover only nominal damages.

But the court declined to give any of said rulings, except as they are contained in the instructions given, as hereinafter stated.

The court instructed the jury upon the foregoing points, among other things, as follows:

That the interest which the plaintiff undertook to protect was his interest as contractor and builder of the frame hotel building, known as the Webster House, in Marshfield. This interest the plaintiff undertakes to prove in this case was an interest which he held by virtue of a statute lien upon that property for the labor and materials which he had furnished. And he undertakes to show that he had furnished
19 labor and materials for the erection of that building, and that he had, at the time this insurance was effected, and at the time of the loss, that interest as contractor and builder; that if at the time this policy was written he had no lien as contractor or builder upon that building, if he had no interest in that property itself as distinct from any claim that he had under his contract, to compensation for the work, then for the purposes of this trial, the court instructed the jury he had no insurable interest in the property covered by the policy, and the policy did not attach; that as to the effect upon this contract of what took place after the fire, and of the alleged negligence or omission after the fire with regard to the enforcement of this lien, which was claimed to effect the rights of the parties, for the purposes of this trial, the court ruled and instructed the jury that the statute of Massachusetts declared upon what conditions this lien shall attach. Those were conditions precedent to the lien attaching; and if the plaintiff in this case
20 had complied with these conditions precedent to the lien attaching, and it was a valid and subsisting lien at the time the contingency contemplated in the policy, of a loss by fire, occurred, that it was immaterial for the purposes of this inquiry whether he did or not subsequently perform those acts, the non-performance of which as conditions subsequent might have dissolved the lien.

The question for consideration is what the extent and value of the lien was, as it subsisted when the contingency occurred contemplated by the policy; and if he had a valid and subsisting lien, which he could enforce for a given amount, and which had a given value at the time of

the loss by fire, then he would not relieve the insurance company from liability to indemnify him for that loss thus occasioned and that value which had been destroyed by fire, although he afterwards might have done certain acts by way of failure to prosecute that lien, or to enforce it by appropriate legal remedies, which would, if there had
21 been no fire, have made that lien void. If he comes after the fire to say that he will look to the indemnity which he has secured to himself by the insurance, and take the value from the insurance company, and not prosecute his double remedy against the property itself, and he elect so to do, for the purposes of this trial, the court instructed the jury that that does not defeat his remedy against the insurance company.

The court further ruled and instructed the jury that if the plaintiff had such builders' lien when the policy was effected, and it was a builders' lien for a given amount, which could have been enforced by the decree of the appropiate court, and recovered that equity of redemption on that property, that then he is entitled to cover, without regard to the question what his equity of redemption might or might not have realized at an auction sale; and that if they found that a party
22 has a valid and subsisting second security for a given amount, and he enters into a contract of indemnity against the destruction of that security, and a loss by fire occurs, both parties having full knowledge of the state of the property and the title when the contract is entered into, that such insurance would cover that second security, although by the subsequent course of events the older and prior security might have swept away the value of the second; and that if the jury found in this case that this plaintiff had a valid claim for a given amount subsisting at the time of the loss, and which he had done everything that was required of him to enforce up to the time of the loss, and that it was such a claim, for instance, as he could have recovered a judgment for $5,000 or $6,000 or $8,000, and a judgment against that equity of redemption on that property, that that was, for the purposes of this trial, an insurable interest, and an interest which he had on that property, whether by any course of events that property
23 might have been by subsequent events more or less affected, and for the purposes of this trial the court instructed the jury to so consider it.

To which instructions, refusals and rulings, the defendants then and there excepted.

The jury found the following verdict:

The jury find for the plaintiff and assess damages in the sum of five thousand three hundred and forty-four dollars ($5,344).

And inasmuch as matters referred to and the several instructions, rulings and directions of the honorable court so objected to do not appear by the record or the verdict aforesaid, the counsel of the defendants pray this honorable court to set their seal to and to allow this bill of exceptions containing the several matters proved and given in evidence and the instructions, rulings, and directions of his honor the judge thereupon, and the exceptions thereto. All which being found to be true, are allowed and ordered to be filed as of Nov. 3, 1876, before
24 the jury left the bar.

In witness whereof I have hereunto set my hand and seal.

[SEAL.] G. F. SHEPLEY,

U. S. Circuit Judge First Judicial Circuit.

A.

Articles of agreement made and concluded the sixth day of April, A D. eighteen hundred and seventy-four, by and between Horace P. Flint, of the city of Boston, county of Suffolk, and commonwealth of Massachusetts, as first party, and William B. Stinson, of Plymouth County, and of the commonwealth aforesaid, and second party, for the erection of a hotel building, to be built on a lot of land owned by said first party, and situated at Sea View, in the town of Marsfield, county of Plymouth, and commonwealth aforesaid, as follows, viz:

1. The said second party hereby binds himself and agrees, for the consideration hereinafter mentioned, to perform in a good and
25 workmanlike manner, under the direction of Moffette and Tolman, of the city of Boston, county of Suffolk, and commonwealth aforesaid architects, and according to the plans furnished by the said architects, all the work mentioned in the specification herein referred to and identified by the signatures of the parties hereto, to give his personal superintendence and attention to the same, and to provide at his own expense proper and sufficient stock and materials therefor, according to the true intent of said specifications and plans; and in case any particulars should be deficient or not clearly expressed in said specifications and plans, the said second party will carry out the general design as directed by the said architects in as thorough a manner as if the same were fully expressed.

And in case any of said work or materials done or provided by the said second party shall be unsatisfactory to the said architects, then the said second party will, on being notified thereof by the said
26 architects, immediately remove such unsatisfactory work or materials, and supply the place thereof with other work and materials satisfactory to the said architects.

2. It shall be lawful for the said first party, through said architects, at all times to direct in writing any additions to or deviations from the plans and specifications aforesaid, without in any other respect or particular varying this agreement, or impairing the force thereof, and in case of any such deviation or addition so directed in writing, such further time shall be allowed for the completion of the said work as the said architects shall decide to be reasonable, and such sums of money shall be added to or subtracted from the amount of the consideration hereinafter agreed to be paid as the said architects shall judge the increase or diminution in the amount of work and materials thereby occasioned to be fairly worth. And it is expressly agreed that no alterations or additions are to be paid for unless so directed in writing.

27 3. The work under this contract shall commence immediately and be prosecuted with vigor, and be finished complete, ready for the formal opening of the building, complete in all its parts, except finishing the fourth story and balustrades outside, on or before the fourth day of July now next.

In case of any failure or unreasonable delay of the said second party to complete the building as above, whether by act or default, in the performance of any of the above stipulations, or compliance with the true intent of these presents, not authorized in writing by the said first party, it shall be lawful for the said first party, after ten days' notice in writing to the said second party to provide other workmen and materials to complete the said work in the place of the said second party, and to deduct the cost and charges thereby occasioned from the sums otherwise becoming due to the said second party under this agreement,

without prejudice to any other remedy which the said first party
28 may have for breach thereof.

4. It is further agreed by the parties hereto that the said second party shall keep the buildings insured at an office satisfactory to the said first party, from time to time, for a sum not less than the whole amount of payments made to the said second party. The policy to be made payable to the said first party, each party agreeing to pay one-half the premium of such insurance.

5. In consideration of the foregoing, the said first party hereby agrees to pay to the said second party, upon certificate of said architects that the terms of this contract are complied with, and upon sufficient evidence that all claims upon the building for work or materials up to the time of payment are discharged, the sum of $25,000.00 (twenty-five thousand dollars) in manner following, viz:

When digging and excavating is done, piers, stone and brick walls up, the frame raised and boarded in and under floors laid, the sum of five thousand dollars. When the chimneys are topped out, roofs shin-
29 gled, inside furred and lathed throughout, plaster mixed, cistern done and connected with conductors, the further sum of four thousand and six hundred dollars. When the inside is plastered throughout and outside virtually finished, the further sum of four thousand and five hundred dollars. When the whole outside is completed and inside all ready (with exception of fourth story) for occupancy, the further sum of four thousand six hundred and fifty dollars; and the balance, being the further sum of six thousand two hundred and fifty dollars, after the expiration of thirty days from the complete finishing of the building in all its parts, in accordance with the plans and specifications, and to the acceptance of the building by the said architects. And said first party further agrees to pay in equal instalments at the time of the above payments the further sum of one thousand dollars, making a gross sum of twenty-six thousand dollars.

30 In witness whereof the parties hereto have set their hands and seals to this and one other instrument of like tenor and date the day first above mentioned.

(Signed) HORACE P. FLINT. [SEAL.]
(Signed) WM. B. STINSON. [SEAL.]

Witnesses:

(Signed) ALBERT J. TOLMAN,
For H. P. Flint.
(Signed) GEO. MOFFETTE, Jr.

B.

Know all men by these presents that I, Stephen M. Allen, county of Suffolk and commonwealth of Massachusetts, in consideration of seventeen thousand dollars to me paid by Horace P. Flint, of said Boston, the receipt whereof is hereby acknowledged, do hereby give, grant, bargain, sell, and convey unto the said Horace P. Flint, his heirs and assigns, a certain tract of land on Hatch's Hill, so called, in the town of Marshfield, in the county of Plymouth, containing one hundred and seventy acres, more or less, and bounded and described as follows, viz: commencing at the southerly boundary thereof on what is called Church road, and thence being bounded southerly, westerly, and northerly by said Church street, or road, and Ferry street, along the line thereof till it strikes land of Little, near the spring; thence bounded northerly by said land of Little and Hall to the corner of the Hall house lot; then

turning on an angle and being bounded westerly or northwesterly by said Hall's land to land of Keen; thence bounded northeasterly and northwesterly by Keen's land to the highway; thence northeasterly by the highway about four rods; thence southeasterly by the house-lot of Lucy Keen and by land of Barstow Carver; thence northeasterly by Hall's pasture and by other land to the corner; thence easterly and southeasterly along the line of the wall and fence by the lands of Hall, Williams, Keen, and Ames to said Church street, or road, the point of commencement, or however otherwise bounded and described, and be the measurement more or less, meaning hereby to convey all the lands and property to me in separate deeds by Mary Hatch and Franklin Hatch et als., and dated March 1st, 1872, and recorded with Plymouth deeds, Lib. 380, fol. 219 and 220, and Lib. 381, fol. 212 and 213; and by deed of Luther Hatch dated March 1st, 1872, recorded Lib. 381, fol. 258 and 259, and by deed of Edwin H. Keen, May 8th, 1872, recorded Lib. 387, fol. 32; reserving the hen-house belonging to Mrs. Hatch, which is to be removed from the premises.

To have and to hold the granted premises, with all the privileges and appurtenances thereto belonging, to the said Horace P. Flint, his heirs and assigns, to their own use and behoof forever.

31 And I do hereby, for myself, and my heirs, executors and administrators, covenant with the said grantee and his heirs and assigns that I am lawfully seized in fee-simple of the granted premises; that they are free from all incumbrances except a mortgage to Mary A. Hatch for twelve hundred dollars, which the grantor hereof is to pay as his own debt, and cause to be discharged upon; that I have good right to sell and convey the same as aforesaid; and that I will, and my heirs, executors and administrators shall, warrant and defend the same to the said grantee and his heirs and assigns forever against the lawful claims and demands of all persons, except as aforesaid.

And for the consideration aforesaid I, Annie M. Allen, wife of Stephen M. Allen, aforesaid, do hereby release unto the said grantee and his heirs and assigns all right of or to both dower and homestead in the granted premises.

In witness whereof we, the said Stephen M. Allen and Annie M. Allen, hereunto set our hand and seal this seventh day of February, in the year one thousand eight hundred and seventy-three.

STEPHEN M. ALLEN. [SEAL]
ANNIE M. ALLEN. [SEAL.]

Signed, sealed, and delivered in presence of—
M. ALLEN.

COMMONWEALTH OF MASSACHUSETTS,
Suffolk, ss:

FEBRUARY 8TH, 1873.

Then personally appeared the above-named Stephen M. Allen and acknowledged the foregoing instrument to be his free act and deed, before me.

GEORGE A. SAVAGE,
Justice of the Peace.

Received February 8th, 1873, at 7.30 p. m., and recorded.

WM. S. DANFORTH,
Register.

PLYMOUTH, *ss:*

OCTOBER 31, 1876.

The foregoing is a true copy from Plymouth County deeds, book 390, page 52.

Attest:

WM. S. DANFORTH, *Reg.*

32 C.

[Boston: Messrs. Foster & Scull, agents.]

THE ROYAL INSURANCE COMPANY OF LIVERPOOL.

Registered. British and foreign. Authorized by act of Parliament.

Capital, two millions sterling.

BOARD OF DIRECTORS.—Ralph Brocklebank, esq., chairman; G. H. Horsfall, esq., deputy chairman; Michael Belcher, esq., Josias Booker, esq., Wm. Cliff, esq., David Duncan, esq., T. Dyson Hornby, esq., D. Malcomson, esq., Wm. J. Marrow, esq., M. Hyslop Maxwell, esq., Henry Royds, esq., John Torr, esq., M. P. Manager, John H. McLaren, esq.

Policy, No. 1408881. Sum insured, $5,000—payment. Premium 40c. $20; to Sept. 13, 1875, 2 mos.

Whereas Wm. B. Stinson has paid the sum of twenty dollars to the undersigned, as authorized agents of the Royal Insurance Company, for insuring from loss or damage by fire the property hereinafter described, not exceeding the sum specified on each article, viz, five thousand dollars on his interest as contractor and builder in frame hotel building, known as the Webster House, in Marshfield, Mass.

Other insurance permitted.

MEMO. It is hereby declared and agreed, that in case of the insured holding any other policy in this or any other company on the property insured hereby, subject to the conditions of average, this policy shall be subject to average in like manner; and it is also hereby further declared and agreed, that in case there be any insurance in any other office extending to the property hereby insured, then this company, in case of loss, will only be liable to pay its rateable proportion of the damage, ascertained in accordance with the conditions of this policy.

Now be it known, that from the 13th day of July, 1875, until the 13th day of Sept., 1875, at twelve o'clock noon, the funds and property of the said company shall be subject and liable to pay or make good to the insured, his executors and administrators, all such loss or damage by fire as shall happen to the property above mentioned, subject to the conditions hereon endorsed.

In witness whereof, we, two of the directors of the said company, by our authorized agents, have hereunto set our hands, and have caused the common seal of the said company to be hereunto affixed.

Dated at Boston, this 16th day of July, in the year of our Lord one thousand eight hundred and five, and issued there.

[SEAL.]

CHARLES TURNER,
RALPH BROCKLEBANK,
Directors.

By their attorneys:

FOSTER & SCULL,
Agents to the said Company.

33 (Indorsed:) Boston agency. Policy No. 1408881. Royal Insurance Company, of Liverpool. Assets, more than $10,000,000 gold. 146. Sum insured, $5,000. Premium, $20. Name, W. B. Stinson. Property . Expires Sept. 13, 1875. From Cyrus Brewer's Insurance Agency, No. 5 Old State House, opposite No. 12 State street, Boston.

CONDITIONS ON WHICH THIS POLICY IS GRANTED.

1. Every person desirous of effecting an insurance must state his name, place of abode, and occupation; he must describe the construction of the buildings to be insured, where situate, and in whose occupation, of what materials the same are respectively composed, and whether occupied as dwelling-houses or otherwise; also, the nature of the goods or other property on which such insurance may be proposed, and the construction of the buildings containing such property, and whether there be any apparatus in or by which heat is produced, other than grates in common fire-places, in any of the said buildings or connected therewith.

2. Every particular circumstance of risk, arising from the situation, contiguity to other buildings or construction of the premises, or the nature of the trade carried on or goods therein, is to be specially mentioned in the order for the policy, so that the risk may be fairly understood; if not so expressed, or if any misrepresentation be given, so that the insurance be effected upon a lower premium than would have been charged had such risk been so fairly stated, or if buildings or goods be described in the policy otherwise than they really are, or if after an insurance shall have been effected, there shall be any erection or alteration or extension of the premises so as to increase the risk, or any erection or alteration of any apparatus for producing heat as aforesaid, or if any hazardous operation or trade shall be carried on, or any hazardous goods be deposited, or any hazardous communication be made, and the same be not respectively made known to the office in writing, or if the insured shall neglect or refuse to pay any further premium which may be demanded in consequence of increase of risk, from any of the aforementioned circumstances, the insured will not be entitled to any benefit under the policy, but the party so insuring may have a new policy upon such terms as may be agreed upon. And if by reason of such alteration or addition, or from any other cause whatever, the company or its agents shall desire to terminate the insurance effected by this policy, it shall be lawful for the company or its agents so to do, by notice to the insured or his representative, and to require this policy to be given up for the purpose of being cancelled, provided that in any such case the company shall refund to the insured a rateable proportion for the unexpired time thereof of the premium received for the insurance.

3. No insurance proposed to this company is to be considered in force until the premium be actually paid; and persons desirous of continuing annual insurances must make their respective payments of the premium thereon on or before the commencement of each succeeding year. No receipts are to be taken for any premiums of insurance but such as are printed and issued from the office, and witnessed by one of the clerks or agents of the office, and impressed with the seal of the company.

4. The interest of any deceased person in any policy of this company may be continued to the executor or administrator, or to the person otherwise entitled to the property insured, provided the person so entitled shall procure his or her interest therein to be endorsed on the pol-

icy, at the office of the company; and if goods insured be removed to any other situation than where the same were deposited at the time of effecting the insurance, such removal must be also allowed by indorsement on the policy, and a premium paid if the risk be increased by the removal, in proportion to such increase.

5. Any person who shall have effected an insurance on any dwelling-houses or other buildings, and shall desire to change it to other houses or buildings, may have the benefit of their original policies, if the nature and circumstances of their risk be not altered, upon their giving due notice of such change at the office of the company, and the same being allowed by indorsement to be made upon the policy.

6. Persons insuring property at this office must give notice of any other insurance already made or which shall hereafter be made elsewhere on the same property on their behalf, and cause a minute or memorandum of such other insurance to be endorsed on their policies; in which case this company shall only be liable to the payment of a rateable proportion of any loss or damage which may be sustained; and unless such notice be given, the insured will not be entitled to any benefit under this policy.

7. Insurances on buildings and goods, in trust or on commission, must be so described and declared at the time of effecting such insurances, otherwise the policy will not extend to cover such property.

8. Losses by lightning will be made good by this company, as far as where either the buildings or the effects insured have been actually set on fire thereby, and burnt in consequence thereof. No allowance will be made for any hay, corn, agricultural produce, or other property which may be destroyed or damaged by its own natural heating, nor for any goods which may be destroyed or damaged while undergoing any process in or by which the application of fire heat is necessary, neither will the company be responsible for loss or damage by explosion, except for such loss or damage as shall arise from explosion by gas.

9. Books of account, deeds, notes, bills, bonds and written securities, stamps, money and gunpowder, cannot be insured upon any terms. Watches, trinkets, medals, coins, sculptures, curiosities, jewels, pictures, prints, drawings, manuscripts, missals, or other curious or rare books; musical, mathematical, and philosophical instruments, china, glass, earthenware, and looking-glasses, are not included in any insurance, unless they are specified in the policy.

10. No loss or damage to be paid on fire happening during the existence of any invasion, foreign enemy, civil commotion or riot, insurrection, military or usurped power, or martial law within the country or locality in which the property insured is situated, unless proof be made to the satisfaction of the directors that such loss or damage was not occasioned by or connected with, but occurred from a cause or causes independent of the existence of such invasion, foreign enemy, civil commotion or riot, insurrection, military or usurped power or martial law, and no loss or damage arising from any of the aforementioned causes, or from fire occasioned by earthquakes or hurricanes, will be paid.

11. All persons insured by this company sustaining any loss or damage by fire are immediately to give notice to the company or its agents, and within fourteen days after such loss or damage has occurred, are to deliver in as particular an account of their loss or damage as the nature of the case will admit of, and make proof of the same by their declaration or affirmation, and by their books of accounts or such other proper evidence as the directors of this company or its agents may reasonably require; and until such declaration or affirmation, account and evidence

are produced, the amount of such loss or any part thereof shall not be payable or recoverable; no profit nor advantage of any kind is to be included in such claim; and if there appear fraud in the claim made for such loss, or false declaring or affirming in support thereof, the claimant shall forfeit all benefit under the policy.

12. Persons insured by this company, and who may suffer loss, will receive their indemnity without deduction or discount; but, in every case of loss, the company will reserve to itself the right of reinstatement, in preference to the payment of claims, if it shall judge the former course to be most expedient.

13. If any difference shall arise with respect to the amount of any claim for loss or damage by fire, and no fraud suspected, such difference shall be submitted to arbitrators indifferently chosen, whose award or that of the umpire shall be conclusive.

14. The directors of the company shall not be sued, or made personally responsible for this insurance until the funds of the company are first exhausted; and the agents shall in no case be responsible, either on account of any legal or other investigation which they may find it necessary to institute for the satisfaction of the company; nor can their personal property be attached on account of any alleged loss by the insured.

You are requested to examine the conditions of your policy, and to observe that no policy is valid unless it bears the company's seal, and has received the signatures of two directors by their attorney or attorneys.

34 D.

Know all men by these presents that I, Horace P. Flint, of Boston, county of Suffolk and commonwealth of Massachusetts, in consideration of seventeen thousand dollars to me paid by Stephen M. Allen, of said Boston, the receipt whereof is hereby acknowledged, do hereby give, grant, bargain, sell, and convey unto the said Stephen M. Allen, his heirs and assigns, a certain tract of land on Hatch's Hill, so called, in the town of Marshfield, in the county of Plymouth, containing one hundred and seventy acres, more or less, and bounded and described as follows, viz:

Commencing at the southerly boundary thereof on what is called Church Road; and thence, being bounded southerly, westerly, and northerly by said Church street or road and Ferry street, along the line thereof, till it strikes land of Little, near the spring; thence, bounded northerly by said land of Little and Hall, to the corner of the
35 Hall house lot; then turning on an angle, and being bounded westerly or northwesterly by said Hall's land to land of Keen; thence, bounded northeasterly and northwesterly by Keen's land, to the highway; thence northeasterly by the highway about four rods; thence southeasterly, by the house lot of Lucy Keen and by land of Barstow Carver; thence northeasterly by Hall's pasture and by other land to the corner; thence easterly and southeasterly, along the line of the wall and fence, by the lands of Hall, Williams, Keen, and Ames, to said Church street or road, the point of commencement, or however otherwise bounded and described, and be the measurements more or less; being the same premises conveyed to me this day by deed to be recorded herewith. The grantee hereof agreeing to release from the effects of the mortgage at any time, after proper notice, before the maturity of the same, and pending no breach of the conditions herein by said Flint,

36 the grantor, his heirs or assigns, certain portions or lots of the land named herein, according to a plan to be made, on receipt of not less than five hundred dollars for each release on account of the mortgage note, and to be indorsed thereon; said land so released to be at the rate of not less than three hundred dollars per acre, and according to a plan to be made satisfactory to said Allen, and to be recorded by the grantor with Plymouth County deeds.

To have and to hold the above granted premises, with all the privileges and appurtenances to the same belonging, to the said Stephen M. Allen, his heirs and assigns, to his and their use and behoof forever.

And I, the said grantor, for myself and my heirs, executors, and administrators, do covenant with the said grantee and his heirs and assigns that I am lawfully seized in fee simple of the aforegranted premises; that they are free from all incumbrances except those
37 mentioned in the deed of the grantee, and that no growth of wood shall be cut off except so far as may be necessary for the improvement of the property in streets, clearing house lots, etc., without consent of the grantor; that I have good right to sell and convey the same to the said grantee and his heirs and assigns forever, as aforesaid; and that I will, and my heirs, executors, and administrators shall, warrant and defend the same to the said grantee and his heirs and assigns forever against the lawful claims and demands of all persons:

Provided, nevertheless, that if the said grantor, or his heirs, executors, or administrators, shall pay unto the said grantee or his executors, administrators, or assigns, the sum of seventeen thousand dollars in manner following, viz: twelve hundred dollars in one year, and fifteen thousand eight hundred dollars in five years from the day of the date hereof, with interest on said sum at the rate of seven per centum
38 per annum, payable semi-annually (except first term, which is annexed), and also pay all taxes and assessments levied or assessed upon or on account of the said premises; then this deed, as also two certain notes bearing even date with these presents, signed by Horace P. Flint, whereby for value received he promises to pay the said grantee, or order, the said sum and interest at the times aforesaid, shall both be absolutely void to all intents and purposes.

And provided, also, that if default shall be made in the payment of the money above mentioned or the interest that may accrue thereon, or of any part thereof, or in the performance of any other of the conditions of this deed, then it shall be lawful for the grantee or his executors, administrators, or assigns to sell and dispose of the granted premises, with all improvements that may be thereon, at public acution, such sale to be in said Marshfield, on or near the premises, without further
39 or demand except giving notice of the time and place of sale once in each of three successive weeks in some newspaper printed in the county of Plymouth aforesaid, and in his or their own names or as the attorney of the grantor for that purpose by these presents duly authorized, convey the same, absolutely and in fee simple, to the purchaser or purchasers accordingly, and out of the money arising from such sale, to retain all sums then secured by this deed (whether then or thereafter payable), together with interest and all costs and expenses, including all sums paid by said grantee or his assigns, paying the surplus, if any, to the said grantor or his assigns; and such sale shall forever bar the said grantor and all persons claiming under him from all right and interest in the premises at law or in equity.

It being mutually agreed that the said grantee or his assigns may

purchase at said sale, and that no other purchaser shall be answerable for the application of the purchase money.

And provided, also, that until default of the payment of said sums or interest or other default as herein provided the grantee shall have no right to enter and take possession of the premises.

In witness whereof, I, the said Horace P. Flint and Anna F. Flint, my wife, in token of her release of all right and title of or to both dower and homestead in the granted premises, have hereunto set our hands and seals this seventh day of February, in the year of our Lord eighteen hundred and seventy-three.

HORACE P. FLINT. [SEAL.]
ANNA F. FLINT. [SEAL.]

Signed, sealed, and delivered in the presence of us.
JOHN C. MULLEN.

COMMONWEALTH OF MASSACHUSETTS,
Suffolk, ss:

FEBRUARY 7TH, 1873.

Then personally appeared the above named Horace P. Flint and acknowledged the foregoing instrument to be his free act and deed before me.

GEORGE S. DERBY,
Justice of the Peace.

Received Feb. 8th, 1873, at 9.30 p. m. & recorded.
WM. S. DANFORTH, *Reg.*

PLYMOUTH, *ss:*

OCT. 31, 1876.

The foregoing is a true copy from Plymouth County registry of deeds, book 392, pages 145, 146.
Attest:

WM. S. DANFORTH, *Reg.*

E.

Know all men by these presents that I, James Deshon, of Boston, in the county of Suffolk, hereby constitute and appoint William E. L. Dillaway, of said Boston, my true and lawful attorney, for me and in my name and stead, to enter in and upon all and singular the lands and premises described in a mortgage deed given by Horace I. Flint to Stephen M. Allen, dated February 7th, 1873, and recorded with Plymouth deeds, lib. 392, fol's 145 & 146, and assigned to me for a breach of the conditions in said mortgage contained, and for the purpose of foreclosing the same.

Said mortgage was assigned to me by an instrument dated June 23d, 1873, and recorded with Plymouth deeds, book 392, page 145;
hereby granting unto my said attorney full power and authority to act in and concerning the premises as fully and effectually as I might do if personally present.

In witness whereof I hereunto set my hand and seal this twentieth day of August, in the year one thousand eight hundred and seventy-four.

JAMES DESHON. [SEAL.]

Signed & sealed in presence of—
LEWIS G. FARMER.

SUFFOLK, *ss:*

AUGUST 21, 1874.

Then personally appeared the above named James Deshon and acknowledged the foregoing instrument to be his free act and deed. Before me.

DAVID F. KIMBALL,
Jus. of the Peace.

Rec'd Aug. 22, 1874, at 10.30 a. m., & recorded.
WM. S. DANFORTH, *Reg.*

PLYMOUTH, *ss:*

OCT. 31, 1876.

The foregoing is a true copy from Plymouth County registry of deeds, book 409, page 177.
Attest:

WM. S. DANFORTH, *Reg.*

43 We, the undersigned witnesses, do hereby certify that William E. L. Dillaway, the agent and attorney of James Deshon, the assignee of the mortgagee named in a certain mortgage deed of land and premises in Marshfield, made to Stephen M. Allen by Horace P. Flint, dated February 7th, A. D. 1873, and recorded in registry of deeds for the county of Plymouth, lib. 392, fol's 145 & 146, did this day, in our presence, make an open and peaceable entry in and upon all and singular the lands and premises described in said mortgage deed for a breach of the condition thereof and for the purpose by him declared of forever foreclosing the right of redemption; and that the said entry was not opposed by the mortgagor or any other person claiming the premises.
Witness our hands this twentieth day of August, in the year of our Lord eighteen hundred and seventy-four.

J. ST. CLAIR WHITTEMORE.
H. WALTER JONES.

44 COMMONWEALTH OF MASSACHUSETTS,
County of Plymouth, ss:

AUGUST 20TH, A. D. 1874.

Then personally appeared the above named J. St. Clair Whittemore and H. W. Jones, and made solemn oath that the foregoing certificate by them subscribed is true. Before me.

C. W. PROUTY,
Justice of the Peace.

Rec'd Aug. 22, 1874, at 10.30 a. m., & recorded.
WM. S. DANFORTH, *Reg.*

PLYMOUTH, *ss:*

OCT. 31, 1876.

The foregoing is a true copy from Plymouth County registry of deeds, book 392, page 146, on margin.
Attest:

WM. S. DANFORTH, *Reg.*

45 F.

COMMONWEALTH OF MASSACHUSETTS,
Plymouth, ss:

At the superior court begun and holden at Plymouth, within and for the county of Plymouth, on the second Monday of February, being the fourteenth day of said month, in the year eighteen hundred and sixty-six.

William B. Stinson, of Plymouth, in the county of Plymouth, petitioner, and Horace P. Flint, of Boston, in the county of Suffolk, respondent, to enforce a lien, as appears by copy of said petition annexed, marked A.

The petition was filed in the clerk's office of this court on twenty-second day of September, A. D. 1874, and an order of notice taken out which was duly served upon the said respondent Horace P. Flint, which was made returnable to the October term of this court next following.

The petition was entered at the said October term of this court, A. D. 1874, and was continued from term to term to the present term. Thomas F. Currier, esquire, appeared as attorney for the said Horace P. Flint, at said October term, and on the tenth day of Novem-
46 ber next following filed an answer, a copy of which is annexed, marked B.

At the October term, A. D. 1874, the court ordered further service to be made of said petition upon Stephen M. Allen, of Duxbury, and James Desho, of Boston, and all others interested in said petition, by serving said Allen and Desho with an attested copy of said petition and order, and by publishing a like copy in the Old Colony Memorial, a newspaper published in Plymouth, in said county of Plymouth, for three successive weeks, the last publication to be thirty days, at least, before and returnable to the next February term of this court, which service and publication were duly made and published.

And now the parties come and file the following agreement, in writing:

PLYMOUTH, *ss:*

Superior court, February T., 1876.

WM. B. STINSON }
v.
HORACE P. FLINT. }

We agree that the above matter, which is petition under lien law, be entered neither party.

D. E. DAMON,
Att'y for Pl'ff.
T. F. CURRIER,
Att'y for Flint.

And the court order that such entry of neither party be made upon the record.

47 The foregoing is a true copy of the record. In testimony whereof I have hereto set my hand and the seal of said superior court, this thirty-first day of October, in the year eighteen hundred and sixty-six.

[SEAL.] WM. H. WHITMAN, *Clerk.*

(A.)

To the honorable justices of the superior court next to be holden at Plymouth, within and for the county of Plymouth, on the fourth Monday of October, in the year of our Lord one thousand eight hundred and seventy-four:

Respectfully represents William B. Stinson, of Plymouth, in said county of Plymouth, that he contracted and agreed with Horace B. Flint, of Boston, in the county of Suffolk, to erect a hotel building and to furnish materials therefor, on a lot of land owned by said Flint, in Marshfield, in said county of Plymouth, containing about one hundred and fifty acres, more or less, at a place called Marshfield Highlands or Bay View, situate on the southerly side of the "Ferry Road," so called, and bounded northerly and northeasterly by the Ferry Road, so
48 called, land of heirs of Samuel Hall and others, southerly by land of heirs of Samuel Williamson and others, and westerly by the Church Road, being the same premises conveyed by Stephen M. Allen to Horace P. Flint, by deed dated February 7, 1873, and recorded in Plymouth County registry of deeds, book 390, page 51, (except such portions thereof as said Flint conveyed to A. O. Buxton, Ira Blanchard, Martha D. Luce, D. E. Demerritt, George C. Ford, Geo. F. Atwood, Thomas W. Cox, and George C. Lord, et al., by deeds executed prior to April 8th, A. D. 1874.) That the terms of said contract were, that said Flint should pay said Stinson the sum of twenty-six thousand dollars for the erection of said hotel building, and furnishing materials therefor. That said Flint failed to perform his part of the contract, and that by reason thereof, without any default on the part of said Stinson, he was prevented from performing completely his part of said contract, and that there is reasonably due to him for labor performed and furnished, and for materials furnished and actually used in the erection of said hotel building over and above all just credits given, the sum of nineteen
49 thousand seven hundred and forty-one dollars and forty cents.

And your petitioner further represents that within thirty days after he ceased to labor on and to furnish materials for said hotel building, he filed in the office of the clerk of said town of Marshfield a statement of a just and true account of the amount due him, with all just credits given, and a description of the property to be covered by the lien, duly subscribed and sworn to, for the purpose of having a lien upon said lot of land and building to secure payment of said debt and costs of enforcing said lien, according to the provisions of chapter 150 of the general statutes of Massachusetts, a copy of which statement, marked A, is hereto annexed and made a part of this petition.

Wherefore your petition' prays that the premises aforesaid may be sold, and the proceeds of the sale applied to the discharge of his said demands and costs.

WM. B. STINSON.

A.

The following is a statement of a just and true account of the amount due me, William B. Stinson, of Plymouth, in the county of Plymouth, and commonwealth of Massachusetts, with all just credits
50 given for labor performed and furnished, and for material furnished and actually used in the erection of a hotel building upon a lot of land situate in Marshfield, in said county of Plymouth, containing about one hundred and fifty acres, more or less, at a place called

Marshfield Highlands or Bay View, on the southerly side of the Ferry Road, so called, and bounded northerly and northeasterly by the Ferry Road, land of heirs of Samuel Hall and others; easterly, by land of heirs of Samuel Hall and others; southerly, by land of heirs of Samuel Williamson and others, and westerly by the Church Road, being all the same premises conveyed by Stephen M. Allen to Horace P. Flint by deed dated Feb. 7, 1873, and recorded in Plymouth County registry of deeds, book 390, page 51 (except such portions thereof as said Flint conveyed to A. O. Buxton, Ira Blanchard, Martha D. Luce, D. E. Demerritt, George C. Ford, George T. Atwood, Thomas W. Cox, and George C. Lord et al., by deeds executed prior to April 8, A. D. 1874), by virtue of an agreement with Horace P. Flint, of Boston, in the county of Suffolk in said commonwealth, who is the owner of the property above
51 described, and this certificate and statement is made, subscribed, and sworn to by me for the purpose of having a lien upon said hotel building, and upon said lot or tract of land and building to secure the payment of the debt so due to me, and the costs which may arise in entering said lien, under the provisions of chapter 150 of the general statutes of said commonwealth, and all laws in addition to and amendatory thereof, and I claim a lien upon said land and buildings for the sum due, according to the account hereinafter stated.

Horace P. Flint to Wm. B. Stinson, Dr.

To labor and material furnished in the erection of a hotel at Hatch's Hill or Bay View, so called, in Marshfield, Mass., during the months of April, May, June, July, August, and September, A. D. 1874, the last day's work done and materials furnished being Sept. 4, 1874.

To labor of	Wm. B. Stinson	142	days, at	5.50	per	day	..	780	00
" " "	J. Norris	35¼	" "	5.00	"	"	..	176	50
" " "	J. Norris, Jr	47	" "	3.50	"	"	..	164	50
" " "	Mayo	36½	" "	3.50	"	"	..	127	75
" " "	Snow	42¾	" "	3.50	"	"	..	149	62
" " "	Fisher	46¾	" "	3.50	"	"	..	163	62
" " "	T. Wilson	51	" "	3.50	"	"	..	178	50

52

To labor of	Foster	54½	days, at	3.50	per	day	..	190	75
" " "	Denin	42½	" "	3.50	"	"	..	148	75
" " "	McKenney	54¾	" "	3.50	"	"	..	191	62
" " "	Sleeper	36½	" "	3.50	"	"	..	127	75
" " "	Ford	32½	" "	2.50	"	"	..	80	62
" " "	L. Sherman	39¾	" "	3.25	"	"	..	129	41
" " "	Randal	5½	" "	3.00	"	"	..	16	50
" " "	A. Moody	48¾	" "	3.50	"	"	..	170	62
" " "	S. Bennett	42	" "	3.25	"	"	..	136	50
" " "	W. Keene	35	" "	3.00	"	"	..	105	00
" " "	Celiff	36½	" "	3.50	"	"	..	127	75
" " "	Gillett	47½	" "	3.50	"	"	..	166	25
" " "	McKay	36	" "	3.00	"	"	..	108	00
" " "	B. S. Sherman	38	" "	3.00	"	"	..	104	00
" " "	F. Norris	45½	" "	3.00	"	"	..	136	50
" " "	Abbot	8	" "	3.00	"	"	..	24	00
" " "	Butler	42½	" "	3.00	"	"	..	127	50

To labor of	Hall (mason)	36½	days, at	4.00	per day		145 00
" " "	Robbins (mason)	25½	" "	4.00	" "		102 00
" " "	Ford (mason)	28¼	" "	2.50	" "		70 62
" " "	Jacobs (laborer)	71½	" "	2.50	" "		178 75
" " "	Rourke	41	" "	2.00	" "		82 00
" " "	Hart	36½	" "	3.00	" "		109 50
" " "	C. Wilson	43¼	" "	3.00	" "		129 75
" " "	E. H. Keene	27	" "	3.00	" "		81 00
" " "	Sprague	42½	" "	3.00	" "		127 50

53

To labor of	A. W. Simmons	29½	days, at	3.00	per day		88 50
" " "	E. Weston	19	" "	3.00	" "		57 00
" " "	H. Ewell	19½	" "	1.50	" "		29 25
" " "	Stevens	4½	" "	3.00	" "		13 50
" " "	Kent	3½	" "	3.00	" "		40 50
" " "	Oakham	26¼	" "	3.50	" "		91 87
" " "	Damon	27¼	" "	3.25	" "		88 56
" " "	Lambert	27¼	" "	3.25	" "		88 56
" " "	Sanders	24½	" "	3.00	" "		73 50
" " "	Peterson	26	" "	3.00	" "		87 00
" " "	W. Weston	8	" "	3.00	" "		24 00
" " "	Bishop	59½	" "	4.00	" "		238 00
" " "	A. J. Moody	36¾	" "	3.00	" "		110 62
" " "	L. Bennett	30¼	" "	3.00	" "		91 50
" " "	Colman	18	" "	3.00	" "		54 00
" " "	Whitman	32½	" "	3.25	" "		105 62
" " "	Tompson	30½	" "	3.50	" "		106 62
" " "	Wilson, jr	30¼	" "	3.00	" "		90 75
" " "	Mahon (laborer)	11	" "	2.50	" "		27 50
" " "	McDonnell (laborer)	16	" "	2.50	" "		40 00
" " "	Starrett	35	" "	3.50	" "		122 50
" " "	Hagan	36½	" "	3.50	" "		127 75
" " "	J. Foster	20	" "	3.25	" "		65 00
" " "	S. Drowns	24¾	" "	3.50	" "		86 61
" " "	O. Drowns	21¼	" "	3.50	" "		75 37
" " "	Farrell	24¼	" "	3.50	" "		61 87

54

To labor of	Grant	20½	days, at	2.50	per day		51 00
" " "	Fitz Gibbon	21	" "	3.50	" "		73 50

To lumber		8,479 00
" doors, sash, weights, & lines		1,321 24
" nails		200 00
" trucking		420 00
" lime & cement		74 00
" 35 thous. brick, at 12		420 00
" stone work		345 00
" plastering		2,800 00
" plumbing		950 00
" gas pipe		390 00
" excavating		70 00
" well		100 00

To drain pipe		72 00
" horse hire		33 00
" fare on railroad		75 00
" mill work		40 50
" hardware		141 99
" lead & twine		42 75
" freight		542 84
" insurance		280 00
" window-frames		97 00
" painting		800 00
" iron work		25 00
" stair posts		25 00
55		
To labor on stairs		323 00
" cedar posts		10 50
" hauling water		43 00
		25,191 40

1874, Cr.

June 1st.	By cash rec. on account	$1,200 00	
" 6th.	" " " " "	1,250 00	
" 20th.	" " " " "	500 00	
" 25th.	" " " " "	500 00	
" 27th.	" " " " "	500 00	
July 3rd.	" " " " "	700 00	
June 26th.	" " " " " paid to Barnes.	300 00	
"	" " " " " " " Tucker.	200 00	
July 3rd.	" " " " " " " Barnes.	300 00	
	" note given to S. O. Breed	350 00	
			5,800 00
			19,391 40

And I, the said William B. Stinson, further declare and state that I made a contract in writing with Horace P. Flint, hereinbefore mentioned, the owner of the lot or parcel of land hereinbefore described, on the sixth day of April, A. D. eighteen hundred and seventy-four, a copy of which contract is hereto annexed and marked A, by virtue of which agreement or contract with said Flint I agreed to erect a hotel
56 building on said lot or parcel of land as is in said contract set out; that said Flint, the said owner of said land, failed to perform his part of said contract, and that by reason thereof, without my own default, I was prevented from completely performing my part of said contract.

Wherefore I claim a reasonable compensation forasmuch as I have performed in proportion to the price stipulated for the whole, and that the statement of amount due as hereinbefore made is a true and just statement of such reasonable compensation.

WILLIAM B. STINSON.

September 18, 1874.

Plymouth, *ss:*

Subscribed and sworn to before me.

D. E. DAMON,
Justice of the Peace.

(B.)

PLYMOUTH, *ss:*

Superior court, October T., 1874.

WM. B. STINSON
vs.
HORACE P. FLINT.

Defendant comes, and for answer denies each and every allegation in the petition contained the same as if each were separately stated and in form denied.

By his att'y.

T. F. CURRIER.

57 Docket superior court, February term, 1876.

Damon.

WM. B. STINSON
v.
HORACE P. FLINT. } 30.

Currier.

(1.) Pet. under lien law. (2.) Currier for def't. Oct. 27, '74.
(3.) Def't's ans., Nov. 10, '74. (5.) Order for service prov'd, Feb. t., '75.
(6.) Wm. H. Whitman, auditor, Feb. t., '74.
Neither party. Feb. t., '76.

I certify that the above is a true transcript of the docket superior court at Plymouth, February term, 1876, and that the above case as shown by the records was entered neither party at said term.

Attest:

WM. H. WHITMAN,
Clerk.

G.

To the Royal Insurance Company of Liverpool:

I, William B. Stinson, the assured named in policy No. 1408801, whereby I am insured in the sum of five thousand dollars on my interest as contractor and builder in frame hotel building known as the Webster House, in Marshfield, Mass., for all such loss or damage by fire as may happen to the property above mentioned, from the 13th day of
58 July, 1875, until the 13th day of Sept., 1875, at twelve o'clock noon, hereby notify you that said building was destroyed wholly by fire upon the night of Sept. 8th, 1875.

Further, that the whole value of the property destroyed was about twenty-five thousand dollars, and the entire interest therein which I have as contractor and builder was over nineteen thousand dollars, said sum remaining due me and unpaid, and for which I hold and have filed a mechanic's lien.

That I had besides said insurance other insurance upon my said interest to the amount of three thousand dollars.

WM. B. STINSON.

A true record.

Attest:

JOHN G. STETSON,
Clerk.

59 The following is the opinion of the court in accordance with which judgment was rendered for the plaintiff in said cause on the nineteenth day of October, A. D. 1877, namely:

Opinion of the court.

SHEPLEY, J.:

The plaintiff insured "his interest as contractor and builder in the frame hotel building known as the Webster House, in Marshfield, Mass." He had furnished materials and labor for the erection of this building and had substantially completed his contract and finished the building in September, 1874.

To secure payment for his labor and materials, he then, on the 18th of September, within thirty days after the completion of the work, filed his claim for a lien under the general statutes of Massachusetts, chapter 150, in the office of the town clerk of Marshfield. Within ninety days after the completion of the work he filed his petition to enforce this lien in the superior court for the county of Plymouth. This was the
60 only interest he had in the premises. There can be no doubt that this was an insurable interest. (May on Ins., p. 87.)

Before the contract to build was made and before the plaintiff had furnished any labor or materials, the owner of the property, by a conveyance dated in February, 1873, had mortgaged it to one Allen. This mortgage was an existing incumbrance upon the property at the inception of the contract, and of the lien, and at the time of the loss by fire.

The general statutes of Massachusetts, chapter 150, sec. 3, provide that a mechanic's lien shall not avail or be of force against any mortgage actually existing and duly recorded prior to the date of the contract under which the lien is claimed. By the provisions of the 33d section of the same chapter, if the property, at the time of recording the statement of the lien, is mortgaged, or under any other incumbrance, the lien shall bind the whole estate and interest of the owner in like manner as a mortgage would have done, and the creditor may
61 cause the right of redemption or whatever other right or estate the owner had in the property to be sold and applied to the discharge of his debt.

The jury have found that the plaintiff had a valid subsisting lien at the time of the fire upon the premises to the amount covered by the policy, and that he could at that time have obtained a judgment for a lien claim of that amount. It was contended on the part of the defendants that the plaintiff was only entitled to recover, not the amount for which he had a lien-claim on the property, but the value of that lien-claim, or the amount he could have realized out of the property by a sale on the execution, and the defendants offered to prove that the Allen mortgage, which was an incumbrance prior in date to plaintiff's lien, amounted to more than the value of the entire estate, including the building, and that in such case the lien would be worthless, and the plaintiff's loss by fire merely nominal. Defendants asked the court for instructions
62 in accordance with these views. The court, for the purpose of submitting to the jury the other questions of fact arising in the case, instructed the jury pro forma upon this branch of the case as follows:

If he had such builder's lien when the policy was effected to an amount exceeding the sum insured, which could have been enforced by the decree of a court having jurisdiction, and which covered at the time

of the loss the equity of redemption on that property, then he is entitled to recover without regard to the question what might have been realized from the equity of redemption at an auction sale on the execution. If a party has a valid and subsisting second security for a given amount and he enters into a contract of indemnity against the destruction of that security by fire and a loss by fire occurs, both parties to the contract of insurance having knowledge of the state of the title to the property, such insurance would cover that second security, although by the subsequent course of events the older and prior incumbrance might have swept away the value of the second. If you find in this
63 case that the plaintiff had a valid claim subsisting at the time of the loss by fire for an amount exceeding the sum insured, which lien-claim up to the time of the fire he had done everything required of him to enforce, and such a lien-claim as he could have recovered judgment upon against the equity of redemption on that property for an amount exceeding the sum insured on all the policies, that was an insurable interest, and one on which he is entitled to recover, without regard to whether, by the course of events, the property might have become more or less valuable, or whether the prior incumbrance might or not amount to the whole value of the property.

It is to be first remarked in connection with this instruction, that there was no question made that the value of the whole property exceeded the sum insured. The instructions asked for only presented the question of the value of the builder's interest, and the instruction quoted was only the part of the instructions with reference to that branch of
64 the case. Of course if the value of the property burned did not amount to the sum insured, no recovery could be had beyond the value of the property destroyed. But the instruction did authorize the jury to find upon that question and upon that branch of the case that the plaintiff might recover the whole amount of his lien-claim not exceeding the value of the property destroyed, although such lien-claim was only on the equity of redemption, and the prior incumbrance might cover the whole value of the property. In substance, the mechanic with a valid lien on the equity of redemption was placed on the same footing with the mortgagor or owner of the equity, and allowed to recover the whole value of the property insured and destroyed not exceeding the amount insured or the amount of his lien, although the mortgage, the prior incumbrance, might also be for the full value of the property.

It is well settled that a mortgagee who insures the property mortgaged at his own expense against loss by fire is entitled, in case of loss by fire before payment of the mortgage debt, to re-
65 cover the amount of the loss of the insurers to his own use, without first assigning the mortgage, or any part thereof, to them. (King v. The Ins. Co., 7 Cush., 1.) In the opinion in that case, Shaw, C. J., states what is peculiarly applicable to the facts in this case: "The contract of insurance with the mortgagee is not an insurance of the debt or of the payment of the debt; that would be an insurance of the solvency of the debtor; of course, as a contract of indemnity, it is not broken by the non-payment of the debt, or saved by its payment. It is not, strictly speaking, an insurance of the property in the sense of a liability for the loss of the property by fire to any one who may be the owner. It is rather a personal contract with the person having a proprietary interest in it, that the property shall sustain no loss by fire within the time expressed in the policy; it is a personal contract which does not pass to an assignee of the property."

59 The following is the opinion of the court in accordance with which judgment was rendered for the plaintiff in said cause on the nineteenth day of October, A. D. 1877, namely:

Opinion of the court.

SHEPLEY, J.:

The plaintiff insured "his interest as contractor and builder in the frame hotel building known as the Webster House, in Marshfield, Mass." He had furnished materials and labor for the erection of this building and had substantially completed his contract and finished the building in September, 1874.

To secure payment for his labor and materials, he then, on the 18th of September, within thirty days after the completion of the work, filed his claim for a lien under the general statutes of Massachusetts, chapter 150, in the office of the town clerk of Marshfield. Within ninety days after the completion of the work he filed his petition to enforce this lien in the superior court for the county of Plymouth. This was the
60 only interest he had in the premises. There can be no doubt that this was an insurable interest. (May on Ins., p. 87.)

Before the contract to build was made and before the plaintiff had furnished any labor or materials, the owner of the property, by a conveyance dated in February, 1873, had mortgaged it to one Allen. This mortgage was an existing incumbrance upon the property at the inception of the contract, and of the lien, and at the time of the loss by fire.

The general statutes of Massachusetts, chapter 150, sec. 3, provide that a mechanic's lien shall not avail or be of force against any mortgage actually existing and duly recorded prior to the date of the contract under which the lien is claimed. By the provisions of the 33d section of the same chapter, if the property, at the time of recording the statement of the lien, is mortgaged, or under any other incumbrance, the lien shall bind the whole estate and interest of the owner in like manner as a mortgage would have done, and the creditor may
61 cause the right of redemption or whatever other right or estate the owner had in the property to be sold and applied to the discharge of his debt.

The jury have found that the plaintiff had a valid subsisting lien at the time of the fire upon the premises to the amount covered by the policy, and that he could at that time have obtained a judgment for a lien claim of that amount. It was contended on the part of the defendants that the plaintiff was only entitled to recover, not the amount for which he had a lien-claim on the property, but the value of that lien-claim, or the amount he could have realized out of the property by a sale on the execution, and the defendants offered to prove that the Allen mortgage, which was an incumbrance prior in date to plaintiff's lien, amounted to more than the value of the entire estate, including the building, and that in such case the lien would be worthless, and the plaintiff's loss by fire merely nominal. Defendants asked the court for instructions
62 in accordance with these views. The court, for the purpose of submitting to the jury the other questions of fact arising in the case, instructed the jury pro forma upon this branch of the case as follows:

If he had such builder's lien when the policy was effected to an amount exceeding the sum insured, which could have been enforced by the decree of a court having jurisdiction, and which covered at the time

of the loss the equity of redemption on that property, then he is entitled to recover without regard to the question what might have been realized from the equity of redemption at an auction sale on the execution. If a party has a valid and subsisting second security for a given amount and he enters into a contract of indemnity against the destruction of that security by fire and a loss by fire occurs, both parties to the contract of insurance having knowledge of the state of the title to the property, such insurance would cover that second security, although by the subsequent course of events the older and prior incumbrance might have swept away the value of the second. If you find in this
63 case that the plaintiff had a valid claim subsisting at the time of the loss by fire for an amount exceeding the sum insured, which lien-claim up to the time of the fire he had done everything required of him to enforce, and such a lien-claim as he could have recovered judgment upon against the equity of redemption on that property for an amount exceeding the sum insured on all the policies, that was an insurable interest, and one on which he is entitled to recover, without regard to whether, by the course of events, the property might have become more or less valuable, or whether the prior incumbrance might or not amount to the whole value of the property.

It is to be first remarked in connection with this instruction, that there was no question made that the value of the whole property exceeded the sum insured. The instructions asked for only presented the question of the value of the builder's interest, and the instruction quoted was only the part of the instructions with reference to that branch of
64 the case. Of course if the value of the property burned did not amount to the sum insured, no recovery could be had beyond the value of the property destroyed. But the instruction did authorize the jury to find upon that question and upon that branch of the case that the plaintiff might recover the whole amount of his lien-claim not exceeding the value of the property destroyed, although such lien-claim was only on the equity of redemption, and the prior incumbrance might cover the whole value of the property. In substance, the mechanic with a valid lien on the equity of redemption was placed on the same footing with the mortgagor or owner of the equity, and allowed to recover the whole value of the property insured and destroyed not exceeding the amount insured or the amount of his lien, although the mortgage, the prior incumbrance, might also be for the full value of the property.

It is well settled that a mortgagee who insures the property mortgaged at his own expense against loss by fire is entitled, in case of loss by fire before payment of the mortgage debt, to re-
65 cover the amount of the loss of the insurers to his own use, without first assigning the mortgage, or any part thereof, to them. (King v. The Ins. Co., 7 Cush., 1.) In the opinion in that case, Shaw, C. J., states what is peculiarly applicable to the facts in this case: "The contract of insurance with the mortgagee is not an insurance of the debt or of the payment of the debt; that would be an insurance of the solvency of the debtor; of course, as a contract of indemnity, it is not broken by the non-payment of the debt, or saved by its payment. It is not, strictly speaking, an insurance of the property in the sense of a liability for the loss of the property by fire to any one who may be the owner. It is rather a personal contract with the person having a proprietary interest in it, that the property shall sustain no loss by fire within the time expressed in the policy; it is a personal contract which does not pass to an assignee of the property."

A mortgagee may insure his interest in the property without
66 regard to the mortgagor, and in case of loss he may recover the amount without any liability to account to the mortgagor. Different mort'agees of the same property have independent interests, which each may insure for his own benefit to the full amount. (Johnson v. Ins. Co., 1 Holmes, 117; Fox v. Ins. Co., 52 Me., 133; Ætna F. Ins. Co. v. Tyler, 12 Wend., 507; S. C., 16 Wend., 386; Carpenter v. Ins. Co., 16 Peters, 501.) So it has been decided that the mortgagor of a house, whose right in equity to redeem has been seized on execution, has an insurable interest in the house, which is not divested by a sale on execution of his equity of redemption so long as his right to redeem such equity continuances, and that in case of loss, such insured is entitled to recover the whole sum insured if the value of the property destroyed amounts to that sum (Strong v. Ins. Co., 10 Cushing, 40). Wild, J., in this case says: "The value of the plaintiff's interest in the property in-
sured is not material. If he had an insurable interest at the time
67 the policy was effected, and had an interest at the time of the loss, he is entitled to recover the whole amount of damage to the property not exceeding the sum insured."

No essential difference is perceived to exist between the case of a builder who has a mechanic's lien on the equity of redemption and the holder of the equity itself. If the mortgagor may insure to the whole value of the property, and recover the value of the property destroyed by fire, although he has remaining an interest only of a right to redeem from a sale on execution of his right to redeem the mortgage, it is not perceived why the holder of a lien on the equity of redemption to secure his debt for labor and materials furnished, who is by statute placed in the position of the holder of the equity, may not insure to the same extent and recover from the insurers the amount insured, not exceeding the value of the property destroyed or the amount of his interest, which is the amount of his lien. There is no
public policy which prevents a recovery in a case like this.
68 There is no pretence that this is a wager policy. The plaintiff had an insurable interest at the commencement of the risk, and it continued at the time of the loss by fire. Having such an insurable interest, he had a right to insure against the destruction of the property on which he had the lien. His right to recover of the insurers does not depend upon the contingency whether or not a prior incumbrancer may collect his debt of the mortgagor. It does not depend upon the solvency or insolvency of the mortgagor. Various considerations of this kind may affect the value of the lien interest and the probability of the realization of the debt by the holder of the lien claim. These contingencies do not enter into the conditions of the contract of insurance. The contract the insurers make is one of guaranty against loss by fire, and in this case they have the right to replace the property or pay the sum insured to the extent of the destruction by fire.

Motion for new trial overruled.

Judgment on the verdict.

69 UNITED STATES OF AMERICA,
Massachusetts District, ss:

I, John G. Stetson, clerk of the circuit court of the United States for the first circuit and district of Massachusetts, hereby certify that the foregoing is a true copy of the record (including the opinion of the court) and of all proceedings in the cause of William B. Stinson, plaintiff, v.

The Royal Insurance Company, of Liverpool, defendants, in said circuit court determined.

In testimony whereof I hereunto set my hand and affix the seal of said circuit court, at Boston, in said district, this first day of November in the year of our Lord one thousand eight hundred and seventy-seven, and of the Independence of the United States the one hundred and second.

[SEAL.] JOHN G. STETSON, *Clerk.*

70 The United States of America to William B. Stinson, of Malden, in the district of Massachusetts, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington on the second Monday of October next, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States, district of Massachusetts, wherein The Royal Insurance Company of Liverpool, England, is plaintiff in error, and you are defendant in error, to show cause, if any there be, why judgment rendered against the said plaintiff in error, as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the honorable George F. Shepley, circuit judge of the United States, first judicial circuit, this twenty-fourth day of November, in the year of our Lord one thousand eight hundred and seventy-seven.

G. F. SHEPLEY,
U. S. Circuit Judge, First Judicial Circuit.

NOV'R 24, 1877.

I admit service of the above upon me.

ROBERT D. SMITH.
Att'y for Wm. B. Stinson.

71 *Bond on writ of error.*

Know all men by these presents that we, the Royal Insurance Company of Liverpool, England, a corporation duly organized and having its usual place of business in Boston, in the commonwealth of Massachusetts, as principal, and George E. Foster and Gideon Scull, of said Boston, as sureties, are held and firmly bound unto William B. Stinson, of Malden, in the county of Middlesex, in said commonwealth, in the full and just sum of ten thousand dollars, to be paid to the said William B. Stinson, his certain attorney, executors, administrators, or assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents. Sealed with our seals and dated the twenty-third day of October, in the year of our Lord one thousand eight hundred and seventy-seven.

Whereas lately, at a circuit court of the United States within and for the district of Massachusetts, in a suit depending in said court between William B. Stinson, plaintiff, and the said Royal Insurance Company, defendant, judgment was rendered against the said Royal Insurance Company, and the said Royal Insurance Company having procured a writ of error and filed a copy thereof in the clerk's office of the said court to reverse the judgment in the aforesaid suit, and a citation directed to the said William B. Stinson, citing and admonishing him to be and appear at a Supreme Court of the United States to be holden at Washington on the second Monday of October next:

Now, the condition of the above obligation is such that if the said Royal Insurance Company shall prosecute their said writ of error to effect, and answer all damages and costs if they fail to make their plea good, then the above obligation to be null and void; otherwise to remain in full force and virtue.

ROYAL INS. CO. OF LIVERPOOL.
By FOSTER & SCULL, *Ag'ts.* [L. S.]
G. E. FOSTER. [L. S.]
GIDEON SCULL. [L. S.]

Signed, sealed, and delivered in presence of—
GEO. C. BUELL.

Approved:

G. F. SHEPLEY,
U. S. Circuit Judge.

A true copy of the bond taken by the judge at the time of allowing the writ of error named in said bond, which bond is on file in the office of the clerk of the circuit court of the United States for the first circuit and district of Massachusetts.

Attest:

JOHN G. STETSON,
Clerk U. S. C. C., Mass. Dist.

(Indorsement on cover:) No. 386. The Royal Insurance Company of Liverpool, England, plaintiff in error, vs. William B. Stinson. Massachusetts C. C. U. S. Filed 8th February, 1878.